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SERVICE DATE – APRIL 28, 2016

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36021]

Finger Lakes Railway Corp.—Sublease and Operation Exemption—Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency

Finger Lakes Railway Corp. (FGLK), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to sublease from Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency (collectively, Agencies), and operate, approximately 86.45 miles of rail lines located in New York, as follows: (1) Watkins Glen Industrial Track, located between milepost 41.35 at or near Penn Yan and milepost 16.55 at or near Watkins Glen, in Schuyler and Yates Counties, a distance of 24.8 miles; (2) Canandaigua Secondary, located between milepost 76.00 at or near Canandaigua and milepost 51.30 at or near Geneva, in Ontario County, a distance of 24.70 miles; (3) Auburn Secondary, located between milepost 37.56 at the Seneca/Cayuga County line and milepost 3.61 at or near Solvay Yard, in Cayuga County, a distance of 33.95 miles; (4) Geneva Running Track, located between milepost 344.40 at or near Geneva and milepost 342.8 at the Ontario/Seneca County line, in Ontario County, a distance of 1.6 miles; (5) Lehigh & Northern Industrial Track, located between milepost

349.20 and milepost 348.70 at or near Auburn, in Cayuga County, a distance of 0.90 miles; and (6) Auburn & Ithaca Industrial Track, located between milepost 349.20 and milepost 348.70 at or near Auburn, in Cayuga County, a distance of 0.50 miles. The Agencies and FGLK state that the Agencies currently own the rail lines but FGLK is responsible for all railroad operations over the rail lines.

According to FGLK, the sublease of the rail lines is part of a series of proposed transactions that will allow FGLK to continue to pay a negotiated “payment in lieu of taxes” (PILOT) while maintaining the benefit of being exempt from local and state taxes. FGLK states that it originally acquired the rail lines in 1995 and transferred title to the Agencies and then leased back the rail lines for purposes of the PILOT arrangement. FGLK states that to extend and restructure the PILOT arrangement, the Agencies will first transfer title to the rail lines to FGLK. Then the Agencies will lease the rail lines from FGLK.¹ Lastly, FGLK will sublease the rail lines back from the Agencies to continue operations over them, including all common carrier service and maintenance of the tracks—the transaction at issue in this docket.

FGLK certifies that proposed transaction does not include an interchange commitment.

¹ FGLK and the Agencies jointly filed one notice for these two related transactions in Dockets No. FD 36011 and FD 36012. Notices of the exemptions were served and published in the Federal Register on March 31, 2016 (81 Fed. Reg. 18,681-83). The Agencies also filed a motion to dismiss the notice of exemption in Docket No. FD 36011 on the grounds that the transaction does not require authorization from the Board. That motion will be addressed in a separate decision.

FGLK states that this transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected revenues as a result of this transaction would exceed \$5 million. Accordingly, under 49 C.F.R. § 1150.42(e), FGLK is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. FGLK, however, has filed a petition for waiver of this 60-day advance labor notice requirement, asserting that there will be no changes for employees working on the rail lines because FGLK already operates the rail lines and will continue to be the sole common carrier operator of the rail lines. FGLK's waiver request will be addressed in a separate decision.

FGLK states that the parties intend to consummate the transaction no sooner than May 12, 2016, the effective date of the exemption (30 days after the verified notice was filed), and only after the Board has ruled on the motion to dismiss in Docket No. FD 36011. The Board will establish in the decision on the waiver request the earliest date this transaction can be consummated.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than May 5, 2016 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36021, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to FGLK, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: April 25, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.